Siskind's Immigration Bulletin – December 31, 2008

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Siskind Susser serves immigration clients throughout the world from its offices in the US and its affiliate offices across the world. To schedule a telephone or in-person consultation with the firm, go to http://www.visalaw.com/intake.html.

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1. Openers

Dear Readers:

A happy new year to all of you! I think most people were happy to close the books on 2008 and we can hope that 2009 will be a better year for everyone.

But while people are already getting in the mindset of saying 2009 and saying President Obama, we still have a few weeks left of the Bush Administration. And the current President has been rushing out regulations rapidly before they make their final exit.

In the last several weeks, we've seen the following major rules released:

1. A rule mandating 168,000 federal contractors begin using E-Verify
2. A new H-2A rule for agricultural workers
3. A revised social security no-match rule
4. A new R-1 rule for religious workers
5. A new H-2B rule for seasonal and temporary workers

In this issue of the newsletter, I've updated our ABCs of Immigration article on R-1 visas to include the numerous changes to the religious worker program. We'll soon be covering the changes in the H-2A and H-2B programs.

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In firm news, I was a speaker at a recent American Immigration Lawyers Assocation national teleconference on marketing in a troubled economy. Go to www.aila.org for information on obtaining the audio recording of the program.

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Many of my immigration lawyer readers know I write a lot about technology. And one of my favorite subjects to cover is the annual Consumer Electronics Show in Las Vegas. I've attended the last five and will be there again next week. I'll be writing my annual article on the top new technologies for immigration law offices for publication upon my return.

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Finally, as always, we welcome your feedback. If you are interested in becoming a Siskind Susser client, please call our office at 901-682-6455 and request a consultation. We are a national immigration law firm and work on a broad range of immigration matters for clients locating across the country.

Kind regards,

Greg Siskind

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2. The ABC's of Immigration: P Visas for Athletes and Entertainers

The P-1 visa category is the visa of choice for athletes and entertainers who do not meet the "extraordinary ability" standard required for an O visa. In practice, P visas are most often used for athletes and entertainers who perform as part of a team or entertainment group for trips of limited duration, such as a concert tour or a sports season. Because the P-1 visa is employer-specific, P-1 athletes and entertainers who are members of a team or group may not perform work or services separate and apart from the team or entertainment group during their P-1 time.

There are two ways for an athletic team or entertainment group to obtain P-1 status for its members. First, P-1 visas may be granted to an athletic team or entertainment group based on its own international reputation. When the visa is granted to the team or group, as a whole, each member of the team or group is given P-1 classification based on the reputation of the team or group. Second, a team or group may seek P-1 visas for individual members of the team or group based on their individual, international reputations.

It is important to note that an athletic team or entertainment group that employs a P-1 alien must be "internationally recognized," which the USCIS defines as "having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country."

P-1 Athletes

A clear advantage of the P-1 category is the wide variety of athletes who may qualify under its provisions. The P-1 category encompasses all athletes who perform at an internationally recognized level of performance and who fall into one of four sub-categories: 1) individual athletes, 2) athletes who are members of certain professional leagues, 3) athletes and coaches who participate in certain amateur leagues, or 4) athletes who participate in theatrical ice skating productions.

A P-1 athlete must be coming to the US to participate in an athletic competition that has a distinguished reputation and that requires participation of an athlete or athletic team that has an international reputation.

- An individual athlete may obtain P-1 classification if he or she is an internationally recognized athlete based on his or her own reputation and achievements as an individual or if he or she is as member of a foreign team that is internationally recognized. The alien must be coming to the US to perform services that require an internationally recognized athlete. Individual athletes must be coming to the US to participate in an athletic competition

with a distinguished reputation that requires participation of an athlete or a foreign athletic team with an international reputation.

- Professional team athletes may qualify for a P-1 visa so long as they are employed by a team that either is a member of an association of 6 or more professional sports teams whose total combined revenue exceed $10 million per year where the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage or is a minor league team that is affiliated with such an association.

- Amateur athletes and coaches may obtain a P-1 visa if they are part of a team or franchise that is located in the US and is a member of a foreign league or association of 15 or more amateur sports teams, if 1) the foreign league or association is the highest level of amateur performance of that sport in the relevant foreign country; 2) participation in such league or association renders players ineligible to participate in sports at the collegiate level in the US under NCAA rules; and 3) a significant number of individuals who play in such league or association are drafted by a major sports league or its minor league affiliate.

- Finally, professional or amateur athletes who perform in a theatrical ice skating production may qualify for a P-1 visa. These athletes may come to the US either to perform in a specific theatrical ice skating production or tour *or* to perform as an athlete in a specific athletic competition. Thus, professional or amateur figure skaters who are part of such productions are not limited to seeking a P-1 visa for theatrical ice skating in the US .

Although the visa category requirements are fairly specific, most athletes who play for major and minor league sports leagues may qualify. The P-1 visa also has benefits for team administrators, because there is no limit on the number of athletes for whom a team may petition, and there is no national cap on the number of nonimmigrants who may enter the US on a P-1 visa as there is with the H-2B visa category that most minor league teams used previously. This flexibility will allow teams to more easily add players mid-season, assuming they encounter no difficulties from the USCIS or relevant consulate during the actual petition process.

Trades and Waivers: When a player is traded, released or put on waivers, additional issues are raised. A player who is traded may legally play for the new team prior to filing an appropriate petition, so long as the acquiring team files a new petition with the USCIS within 30 days of the trade. Once the 30-day deadline is met, the athlete will remain in status and will be able to play until the P-1 petition is decided. There is no need to premium process a trade petition, because the athlete is in legal status while the petition is pending.

The law does not specifically address the issue of players placed on waivers. "Waivers" refers to a player being released by a team whereby another team can pick up the player within 24 hours or the player is made a free agent. The rules are not clear whether a waiver is to be treated as a trade when the player is picked up by another team, though in practice USCIS appears to read the law broadly. Nevertheless, it would be considered good practice to file a new P-1 petition for the player. That player will not be able to enter the US to play until the new petition is

decided. It is strongly advisable to premium process this type of petition so the player can resume play as soon as possible.

P-1 Entertainers

The P-1 visa category is also an attractive method for entertainers who are part of an entertainment group to come to the US to perform as an integral part of that group's performance. Dance troupes, acting companies, orchestras and vocal groups are examples of the type of groups that use the P-1 visa for their members. This visa category is usually reserved only for those entertainers who are part of a group. In fact, individual performers cannot obtain a P-1 visa, unless they are coming to the US to join a foreign entertainment group.

The group with which a P-1 entertainer will perform in the US must be internationally recognized as outstanding in the discipline for a "sustained and substantial period of time," although the government may waive this requirement where the group is nationally recognized for a sustained and substantial period of time in consideration of special circumstances. For example, this exception may be available where a group has had difficulty gaining recognition outside its home country because of lack of access to news media or because of geographical considerations. The group also must have been established for a minimum of one year.

The P-1 visa also requires that an entertainer have a "sustained and substantial" relationship with the group, which is usually at least one-year. This requirement has three exceptions, however. *First*, this requirement only applies to 75% of the group's performers and entertainers. Conversely, 25% of the group need not have a one-year relationship with the group. *Second*, the government may waive this requirement where an alien replaces an essential member of the group in the case of illness or unanticipated and exigent circumstances or where an alien augments the group by performing a critical role. *Third*, the one-year requirement does not apply to circus personnel who perform as part of a circus that is nationally recognized as outstanding for a sustained and substantial period of time.

Support Personnel

A P-1S visa may be available to aliens coming to the US to work as essential support personnel for P-1 athletes, teams or entertainment groups. In the context of a P-1 athlete or entertainer, an essential support alien is defined as a highly skilled, essential person who is an integral part of the performance of a P-1 athlete or entertainer, because he or she performs support services that cannot be readily performed by a US worker and that are essential to the successful performance of the P -1 athlete or entertainer. Essential support personnel must have appropriate qualifications to perform the services, critical knowledge if the specific services to be performed and experience in providing such support to the P-1 athlete or entertainer. For example, coaches, league officials or referees, front office personnel, camera operators, lighting technicians and stage personnel are all examples of individuals who might be categorized as P-1S essential support personnel.

Other P Categories

More than one alien may be included in a petition so long as each alien will complete the visa process in the same manner. For instance, all Canadian players for a sports

team may be included on one petition as they will all be processed at a port of entry (Canadians do not require P-1 visas to be endorsed by a consular post). All other players (such as Russian, Slovakian, Finnish, etc) may be included on another petition together, as they will all consular process. Coaches must be listed on separate, individual petitions. Support personnel must also be listed on a separate petition. A petitioner may file for multiple aliens that are already in the US, but those aliens must be included on a petition that is separate from aliens that are outside the US.

Labor Consultation

To have a P-1 petition approved, the employer/petitioner must show that it consulted with a labor organization with experience in the field of athletics or entertainment involved and must submit with the petition an advisory opinion from that organization. In the alternative, if the petitioner establishes that no appropriate labor organization exists, the government may decide the petition without requiring an advisory opinion. If the petitioner does not submit an advisory opinion and does not establish that an appropriate labor organization does not exist, then the government will forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization within 5 days of the date of receipt of the petition. The labor organization must then meet certain requirements for responding to the petition.

General P-1 Application Procedures

More than one alien may be included in a petition so long as each alien will complete the visa process in the same manner. For instance, all Canadian players for a sports team may be included on one petition as they will all be processed at a port of entry (Canadians do not require P-1 visas to be endorsed by a consular post). All other players (such as Russian, Slovakian, Finnish, etc) may be included on another petition together, as they will all consular process. Coaches must be listed on separate, individual petitions. Support personnel must also be listed on a separate petition. A petitioner may file for multiple aliens that are already in the US, but those aliens must be included on a petition that is separate from aliens that are outside the US.

Required Evidence to Support a P-1 Athlete or Athletic Team

When an application is filed on behalf of an individual athlete or athletic team, except for an application for a player in a league with six teams and $10,000,000 in revenue (or an affiliated league), the petitioner must present a tendered contract with a major US sports league or team or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport, and at least two of the following types of evidence:

- Participation to a significant extent in a prior season with a major US sports league;
- Participation on a national team at international events;
- Participation to a significant extent in a prior season with a US collegiate team;
- A written statement from an official in the governing body of the sport outlining how the athlete or team is internationally recognized;

- A written statement from a member of the sports media or other recognized expert outlining how the athlete or team is internationally recognized;
- Evidence that the alien is highly ranked if the sport uses a ranking system; and
- Evidence that the alien or team has received a significant award for performance.

For players on teams qualifying based on the size of the league and the league revenue, a contract with a team, evidence of the league meeting the threshold requirements noted above, evidence of the player's qualifications and either the labor consultation or documentation that no appropriate group exists.

Required Evidence to Support a P-1 Entertainer or Entertainment Group

When the application is being filed on behalf of an entertainment group, the petition must be supported by the following evidence:

- Evidence that the group has been established and performing regularly for at least one year;
- A statement from the petitioner listing each member of the group and the exact dates for which each member has been employed on a regular basis with the group; and
- Evidence that the group has been internationally recognized in the discipline for a sustained and substantial period of time, which may be shown in two ways: first, by nomination or receipt of awards for outstanding achievement in the field; second, by submitting three of the following types of evidence:

  - The group has and will continue to perform a starring role in productions or events with a distinguished reputation, evidenced by reviews, advertisements, press releases, contracts or endorsements;

  - The group has international recognition, evidenced by reviews in papers, trade journals, etc.;

  - The group has and will continue to perform a starring role in productions or events with a distinguished reputation, evidenced by articles in newspapers, trade journals, etc.;

  - The group has had commercial success;

  - The group has gained significant recognition for achievements from leaders in the field; or

  - The group commands a high salary compared to others similarly situated.

Length of Status

A P-1 alien may be admitted for as much time as is approved for the subject competition, event or performance. If an alien is admitted on a P-1 as an individual athlete, the period of initial status may be any length of time not more than five years, and that period of time may be extended for a period of up to 5 years.

Processing Time

Premium processing is available for P-1 visas and ensures that the petition will be decided within 15 calendar days from the date USCIS receives it. Premium processing requires an extra government filing fee of $1000. Without premium processing, the processing time for a P-1 visa is approximately two to five months, but it could be longer. For this reason, a petition for a P visa that is not being premium processed should be filed six months before the visa is needed.

Filing Fee

The filing fee for a P visa is $320 as of July 31, 2007.

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3. Ask Visalaw.com

If you have a question on immigration matters, write *Ask-visalaw@visalaw.com*. We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only intended to provide general information. You should consult with your own attorney before acting on information you see here.

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Q- I became a naturalized U.S. citizen in 1985. I am applying for a green card for my mother who is now 80 years old. She came to visit us over a year ago and has continued living with us. She has been a widow for many years. I am filing form I-130 for her and also I-485 and I-864. As a Canadian she did not need any visa until the last year or two and so she does not have any I-94. She has never worked here.

Do I have to submit a medical examination report for her with the other forms?
A - She's still subject to a medical exam regardless of her age. She doesn't have to be fingerprinted in the process, however, since she is over age 74. That's the only difference she'll see in the process versus a younger person.

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Q - I am on an H-1B visa which will expire in September 2010. My wife and two children just got H-4 visas, but they are not in the US yet. My wife's visa expiration date is September 2010. When I get an extension of my H-1B status in 2010 for three more years, what will happen to my wife's status? Does she have to go out of the country and re-stamp the visa or she can stay with me on behalf of my new I-797?

A - Once your wife and children are here, they'll have I-94s valid probably for the same length as yours. You can extend their stay along with yours and they can remain after the expiration date of their visa as long as they keep the I-94s valid. Be sure they don't have an I-94 expiration date that is earlier than yours. Should that happen, you might be able to get the I-94s corrected or, if that doesn't happen, then you should make sure to file to extend their stay before the I-94s expire. Note that if

they leave the US after their visas have expired, they will need a new visa stamp to reenter. But, again, as long as their I-94s are not expired and an extension of stay is filed in a timely manner, they should be okay. As always, discuss with your immigration lawyer.

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Q - I am currently on H-1B Visa and my wife is on H-4 visa. I have heard that she can work in volunteer and non-profit organizations and also that if they file her H-1B she is exempt from the H1B quota. Also she can get paid on the volunteer job?

A - True volunteer work for a charity- work that a US worker would normally not be hired to handle - is normally okay on an H-4. You should talk to your immigration lawyer about the specific job duties in the position your wife is seeking. If they are considering paying her and filing an H-1B, however, I suspect the position needs a work visa. A charity is not automatically exempt from the H-1B cap, but if there are close ties with a university or a non-profit research institution, they may have an H-1B cap exemption available.

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Q - Can I petition for my mother to come to the US if I am a citizen and married?

A - If you are a US citizen petitioning for a parent, your marital status does not matter.
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Q - If my visa R-1 will expire and I leave the US just before my I-94 expires while my form I-360 immigrant religious worker petition is pending, can my I-360 still be approved will it be automatically rejected by USCIS?

A - You do not need to be in the US while an I-360 is pending. As long as the employer still has a position for you, that would be the key thing.

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4. Border and Enforcement News

A new report by think tank Goldwater Institute is calling for more audits and extensive investigations into the Maricopa County, Ariz., Sheriff's Office, and the conditions it provides immigrant detainees in their jails. *The Phoenix Business Journal* reports that the Institute also questions Sheriff Joe Arpaio's immigration sweeps, arguing that they take resources away from violent crime investigations and have ultimately not been effective in picking up undocumented immigrants involved in drug trade and human smuggling. Earlier last year, Arpaio announced that he would crack down on undocumented immigrant activity by conducting sweeps that target day-labor areas in Phoenix, Mesa, and Wickenburg, Ariz.

The Goldwater report also says Arpaio's office needs to improve its recordkeeping, and that the US Attorney's Office should investigate treatment and living conditions of its prisoners in its county jails. During the past year, Maricopa County has faced a number of lawsuits from former and current inmates of these jails.

Arpaio was re-elected to a fifth consecutive four-year term as county sheriff in November, running on a 'get-tough' approach to immigration enforcement. Arpaio, in an interview with Phoenix's *KTAR News* defended his actions from the Goldwater Institute's criticism. "I take orders from four million people that I serve," Sheriff Arpaio said. "It's just another irritation, going after this sheriff, because they don't like the way that I enforce the illegal immigration laws."

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Earlier this month, US Border Patrol agents apprehended 14 undocumented immigrants from China in two separate border arrests along Arizona's Tuscon sector stretch of the US-Mexico border, according to *The Arizona Daily Star.*

Border Patrol agents questioned the Chinese undocumented immigrants about their immigration circumstances before preparing to deport them back to China, Border Patrol spokesman Mike Scioli said. One of the groups caught told agents that they made contact from China with the smuggler, and that the smuggler made the arrangements with drivers in Mexico.

While it is not unheard of for Border Patrol agents to apprehend Chinese undocumented immigrants, getting two groups in one week is rare, Scioli said. They pay as much as $20,000 per person to be smuggled into the US, he said. In comparison, undocumented immigrants from Mexico usually pay between $1,000 and $2,000 per person.

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Earlier this month, the US Border Patrol has met President Bush's goal of doubling its workforce during his presidency to more than 18,000 agents, *The Associated Press* reports. The push for the border security increase began in 2006, when Bush called for the hiring of an additional 6,000 Border Patrol agents by the end of 2008. The initiative set off an intense recruitment drive that included NASCAR sponsorship and billboards hundreds of miles north of the border.

While the numbers are in place, some say the real challenge is training and incorporating the large number of rookie agents. The Government Accountability Office said that "while Border Patrol officials are confident that the academy can accommodate the large influx of new trainees anticipated, [Department of Homeland Security] has expressed concerns over the sectors' ability to provide sufficient field training," the GAO report said.

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According to some immigration court officials, there continues to be a steady decrease of certified court interpreters, which comes at a bad time as law enforcement agencies progressively step up actions against undocumented immigrants, *USA Today* reports. Wanda Romberger, manager of court interpreting services at the National Center for State Courts, says that almost every state is being confronted with a lack of certified interpreters – who have to pass difficult exams – especially in languages other than English.

"I don't know of many jurisdictions that would say they have enough qualified court interpreters," she says. Currently there are currently about 3,000 certified interpreters. Only 500 work in languages other than Spanish. The National Association of Judiciary Interpreters and Translators did not estimate how many more interpreters are needed, but according to a 2007 report by the Administrative Office of the US Courts, there was a 17% increase in the number of events requiring interpreters in 115 languages in federal courts from October 2006 to September 2007.

Poor or inadequate interpretation has been argued by some immigration court officials as the cause for reversal for many immigration cases. Administrative office spokesman Richard Carelli says federal courts provide adequate interpreters for most Spanish speakers, who, he says represent 95% of immigration-related cases.

However, the shortage affects state and courts equally in languages other than Spanish, and pushes courts to use freelance interpreters who may lack training. Suzan Kern, former interpreter turned immigration lawyer, warns that "there is an assumption that if you're bilingual, you can interpret and translate but it is most definitely not the case." Certified interpreters have to pass exams, either through a state certification program, the Administrative Office or the Consortium for State Court Interpreter Certification.

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Former Mexican President President Ernesto Zedillo said that he and his countrymen regret and resent the construction of border fencing between the US and Mexico, calling for more "intelligent" security between the two countries. In a December interview with website *CNS News*, Zedillo said he finds the fence "profoundly offensive." The sentiment expressed by Zedillo is expounded further in "Rethinking U.S.-Latin American Relations", the latest report by the Brookings Institution's Partnership for the Americas Commission; Zedillo is the Commission's co-chairman and co-author of the report.

The report suggests that the problem with the US' approach to border fencing is that it will actually do little to curb drug trafficking and border violence. The Commission's other co-chairman, former US Undersecretary of State Thomas R. Pickering, suggests that America should address the problems currently existing in the US instead of creating a physical barrier. In a recent Commission panel, Pickering noted that 90% of guns seized in drug law enforcement operations in Mexico can be traced back to the United States. "Mexican DTOs and their associated enforcement groups generally rely on firearms trafficking from the United States to Mexico to obtain weapons for their smuggling and enforcement options," the report says.

"Drug traffickers, firearms smugglers, and independent criminals smuggle large quantities of firearms and ammunition from the United States to Mexico on behalf of Mexican DTOs, who then use these weapons to defend territory, eliminate rivals, enforce business dealings, control members, and challenge law enforcement," the report adds.

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5. News From the Courts

Bonilla v. Mukasey, (1st Cir. August 25, 2008)

The government bears the initial burden of showing firm resettlement. In the present case, we are confronted with the question of whether the resident stamp in Petitioner's passport is sufficient to represent an offer of permanent residence. We simply do not have evidence of the significance of a five-year residence stamp from Venezuela. It seems prudent to remand the case in light of the severe consequences in finding Petitioner had been firmly resettled.

Petitioner, a citizen of Colombia, sought asylum, withholding of removal and Convention Against Torture (CAT) relief on the basis that he had received a number of threatening phone calls and a threatening letter from the Revolutionary Armed Forces of Colombia (FARC) because he and his family supported the Liberal Party candidate in the presidential election. After receiving these threats, Petitioner had traveled to Venezuela using a five-year resident stamp in his passport. Petitioner testified that he traveled to Venezuela in the past on business because he owned a cattle farm there. He sold the farm on his last visit there in 2002. He then returned to Colombia and filed a complaint with the district attorney in which he reported the threats he and his family had received. Petitioner and his wife then fled to the United States.

The immigration judge denied all relief. The IJ concluded that Petitioner was ineligible for asylum because he had been firmly resettled in Venezuela prior to entering the United States. The IJ also found that even if Petitioner were eligible for asylum, he failed to establish a well-founded fear of persecution in Colombia. The IJ held that Petitioner was not eligible for withholding of removal, finding the evidence of past threats did not establish a likelihood of future persecution by the FARC. As to CAT relief, the IJ held that Petitioner failed to show that he would be subjected to torture should he return to Colombia or that the Colombian government would inflict or acquiesce to the torture. The BIA affirmed the IJ's decision upholding the IJ's finding that Petitioner had been firmly resettled in Venezuela and was ineligible for withholding of removal.

On review, the First Circuit rejected Petitioner's argument that the IJ failed to determine whether he had suffered past persecution. The court, after reviewing the record and the IJ's statements, held that although the statements did not represent an express finding that Petitioner did not suffer past persecution, it was evident from the IJ's opinion that she considered the evidence and concluded that Petitioner's past experience did not amount to persecution. The court also upheld the agency's conclusion that Petitioner had not suffered past persecution. The court noted that threats alone constitute past persecution in only a small category of cases, and only when the threats are so menacing as to cause significant, actual suffering or harm, *citing Tobon-Marin v. Mukasey*, 512 F.3d 28, 32 (1st Cir. 2008). The court held that in the present case it could not find that the agency was compelled to find that Petitioner was persecuted, noting that neither Petitioner nor any member of his family was ever approached by the FARC. The court, therefore, affirmed the BIA's denial of withholding of removal.

On the issue of firm resettlement, the court stated that the government bears the initial burden of showing firm resettlement and that if the government meets the burden, a presumption of firm resettlement arises. The applicant can rebut this presumption by showing by a preponderance of the evidence that the bar to asylum does not apply. Although Petitioner testified that he was allowed to live in Venezuela because he was a businessman there, the court stated that his testimony did not show that he had an offer to remain in the country indefinitely. The court also stated that there was no evidence in the record that Petitioner ever lived in Venezuela so it would be unusual to conclude that Petitioner had been firmly resettled there. The court conceded, however, that he may be deemed to have been firmly resettled there if the residence stamp in his passport indicates that he entered Venezuela with an offer of permanent residence.

The court rejected Petitioner's argument that he was not firmly resettled because when he entered the United States, his Venezuelan had expired one month before. The court noted that the language of the regulation, 8 CFR §208.15, does not require that an applicant have an offer of permanent residence at the time he enters the United States. The court then looked to the question of whether the residence stamp in Petitioner's passport represented an offer of permanent residence. The court found that it did not have enough evidence of the significance of the five-year residence stamp and that a prudent course, in light of the possible severe consequences to Petitioner, was to remand the case.

The court found that the BIA failed to address the IJ's alternate ground for denying asylum, namely that Petitioner lacked a well-founded fear. The court noted that although the agency found that Petitioner did not establish past persecution, that finding did not foreclose that Petitioner could establish eligibility for asylum based on a well-founded fear.

The granted the petition for review.

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6. News Bytes

Figures released last week by the non-profit Institute of Internal Education show that the number of foreign students enrolled in US colleges increased by nearly 7% last year to 623,805, an all-time high and the largest one-year increase on record, *USA Today* reports. Enrollments of foreign undergraduate and graduate students just starting to pursue their degree are increasing at an even greater rate of 10.1%, an indicator that growth will continue, according to the report.

“These numbers are truly historic,” said Goli Ameri, Assistant Secretary of Education. “We haven’t just covered lost ground … we have now surpassed” previous records.

Institute president Allan Goodman credits the sharp increase primarily to efforts by the US government and colleges in recent years “to ensure that international students know they are welcomed here.” From 2000 to 2006, the number of international students in US institutions dropped from 25% to 20%, according to the Organization for Economic Cooperation and Development.

The Institute's October study of 778 colleges and universities shed further light on the reason for increased international enrolment. Of 432 schools that reported an increase in international enrollment, 19% said the weak US dollar made tuition costs more attractive.

The increase of foreign students also plays a vital role in the domestic economy, the report says, as foreign college graduates contribute about $15.5 billion to the economy. The reliance upon foreign students to contribute domestically will only continue to increase, Goodman warns. "We just don't have enough Americans going into science, math and engineering, and the foreign graduate student is the teaching assistant we badly need," he says. "We want them because one of them is going to cure cancer or invent the vaccine for HIV."

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The Washington Post reports that Jonathan Scharfen, acting director of US Citizenship and Immigration Services since April 2008, stepped down this month. Scharfen will reportedly become the new vice president of international operations for Northrop Grumman's technology services sector. His acting deputy, Michael Aytes, will oversee day-to-day agency operations for at least the tenure of the Bush administration, USCIS spokesman Bill Wright said.

"[Scharfen] has made lasting contributions to homeland security, including processing a record number of naturalization petitions, effectively eliminating an FBI name check backlog, and welcoming thousands of Iraqi refugees that supported the US overseas." DHS Secretary Michael Chertoff said in a statement thanking Scharfen for his service.

A U.S. Marine Corps lawyer and former National Security Council staffer, Scharfen joined the agency in June 2006 as deputy to its former director, Emilio T. Gonzalez, after a 25-year active duty military career and three years as counsel and deputy staff director at the House International Relations Committee.

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A recent Zogby International poll of Catholics in the United States showed overwhelming support for reform of American immigration laws, with Catholics supporting a path to citizenship for the estimated 12 million undocumented persons in the country. *Spero News* reports that the poll was conducted last October with a sample 1,000 people who self-identified as Roman Catholics, and was commissioned by Migration and Refugee Services of the United Conference of Catholic Bishops (USCCB).

About 69 percent of Catholics polled supported a path to citizenship for undocumented immigrants, provided they register with the government; 62 percent polled support the concept but only if they were required to learn English.

"These results show that, like other Americans, Catholics want a solution to the challenge of illegal immigration and support undocumented immigrants becoming full members of our communities and nation," said Johnny Young, executive director of Migration and Refugee Services of the USCCB. "It is clear that those opposed to a legalization of the undocumented are a minority."

Additional findings of the survey reveal that 64 percent of Catholic opposes the construction of a wall along the US border with Mexico, while three out of four Catholics agree that the church has a moral obligation to help provide for the humanitarian needs of immigrants, regardless of their legal status.

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The Miami Krome Detention Center kicked off an ambitious new program this month, which aims to rapidly speed immigration court proceedings for any immigrants facing deportation. *The South Florida Sun-Sentinel* reports that the Miami center has shaved an average of 13 days off the time it takes to process cases. Not only does this mean that immigrants get a quicker decision on whether they will be deported or set free, but it has translated into millions in saving on detention costs and created a more efficient court system.

"The cards tend to be stacked against immigrants seeking relief from deportation," said Cheryl Little, executive director of Miami's Florida Immigration Advocacy Center. "Many face forced separation from family. Some face the threat of death if they're returned to their native country. Some have a legal claim to stay and don't know it.

The new orientation program is intended to give immigrant detainees a better overview of their right and the legal process, help find pro-bono lawyers for some and allows others to better represent themselves. It also clarifies to some immigrants that they have no legal standing to be in the US, making it clear that it is best to cut court proceedings short, saving them legal fees.

"This program is extraordinarily important because there are people in the detained setting that are giving up their rights' to stay in the country," said Linda Osberg-Braun, president of the American Immigration Lawyers Association's South Florida chapter.

While the program was launched in 2003 and currently covers 13 sites, the orientation at the Krome Center was considered exceptionally successful. An independent study of the center revealed that cases processed at the Krome Center had their cases processed in 27 days versus the 40 day averages of most immigrant detention centers.

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Last month, the Irish government announced that its countries' airports are set to become the first outside North America to offer full US immigration checks before departure, potentially boosting their position as transatlantic hubs, *Reuters* reports. Dublin's and Shannon's airports already offer immigration clearance but passengers must still clear customs and agriculture inspection on arrival in the United States.

Shortly after the announcement, Ireland's transportation minister Noel Dempsey signed an agreement with DHS Secretary Michael Chertoff which would allow Shannon to offer full clearance facilities by summer 2009, and Dublin by 2010. "Flights from Shannon and Dublin airports will be treated like domestic flights in the US," Dempsey said.

Airlines will be able to fly into less congested and less expensive domestic terminals at US airports, while passengers will be able to check their baggage through to their final destination, according to Dempsey. Currently only airports in Canada and the Caribbean offer the full US immigration check services.

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7. Siskind's Legislative Update

The content in Legislative Update comes from Greg Siskind's five blogs. Click on any of the articles' links for similar stories.

ARIZONA NOT PROSECUTING EMPLOYER SANCTIONS CASES

My last post discussed one of two parts to the Arizona immigration law - the requirement to use E-Verify. The more controversial part of the law allows the state to revoke business licenses for employers who employ unlawfully present workers. According to a report in the Arizona Republic, after a full year in force, not a single employer has been prosecuted. That part of the law is very possibly unconstitutional and the courts are still in the middle of sorting out the issues. But the federal government is responsible for enforcing immigration law and that's where the focus needs to be rather than at the state or local level.

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NEBRASKA GOVERNOR WON'T ISSUE E-VERIFY EXECUTIVE ORDER

Nebraska Governor Dave Heinemann refuses to follow governors in Rhode Island and Minnesota in requiring state contractors and state agencies to use E-Verify.

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US CHAMBER SUES OVER FEDERAL CONTRACTOR E-VERIFY RULE

The gist is that the 1996 immigration act which created E-Verify said that the program was voluntary. Also, requiring the re-verification of existing employees exceeds the statute's mandate. The suit alleges as well that the regulation exceeds the parameters of the Federal Property and Administrative Services Act of 1949.

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NEW YORK COUNTY PROPOSING EMPLOYER SANCTIONS RULE

Putnam County, New York is considering a law that would permit the revocation of business licenses for certain types of small businesses. My favorite quote from the story is actually in the reader comments:

I can think of one person who benefits from illegal immigrants: The Consumer, whose cost of numerous indispensible services decreases s a result of low paid illegal immmigrants. If people dont like illegal immigrants performing labor intensive work, maybe they should do it themselves. Until everyone cuts their own lawn, flips their

own burger, cleans their own house and builds their own additions they should shut their ignorant white-trash mouths.

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JUDGE TO DECIDE IF OREGON COUNTY'S EMPLOYER SANCTIONS LAW OKAY

A judge will determine if Columbia County's law fining employers up to $10,000 for unlawfully employing illegally present workers is legal.

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RHODE ISLAND EXECUTIVE ORDER STILL DRAWING FIRE

The Rhode Island Department of Administration has been having hearings about implementing Governor Carcieri's mandate that all state agencies and all private companies doing business with the state use E-Verify. The ACLU is still fighting the order in court and wants protections for US workers.

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8. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- Arizona not Prosecuting Employer Sanctions Cases
- CIS Ombudsman Gives Mixed Review of Arizona E-Verify Experience
- Immigration as Stimulus – 10 Ideas for Using Migration Policy to Jumpstart the Economy and Create Jobs
- ICE to Cut Back on Forced Sedation of Deportees
- From the Department of "Do You Feel Safer?"
- US Chamber Sues Over Federal Contractor E-Verify Rule
- Siskind V. *The Economist*?
- IFCO Nailed for $21 Million for Violating Immigration Laws
- FAIR Freaking Out Over Appointment of Solis to Secretary of Labor
- DHS to Begin Collecting Fingerprints and Photos of Green Card Holders
- New H-2B Rule About to be Published
- Ombudsman: Judges Holding Up Naturalizations to Bolster Funding for the Courts

The SSB Employer Immigration Compliance Blog

- Nebraska Governor Won't Issue E-Verify Executive Order
- US Chamber Sues Over Federal Contractor E-Verify Rule
- New I-9 Coming Soon

- Kosher Meat Worsens in Wake of Agriprocessors Raid
- BP Refinery in Indiana Raided
- New York County Proposing Employer Sanctions Rule
- Arizona Municipality Warning Contract Employers
- Judge to Decide if Oregon County's Employer Sanctions Law Okay
- 9 Howard Industries Defendants Sentenced
- Rhode Island Executive Order Still Drawing Fire
- Privacy Group Slams NPR Over E-Verify Underwriting

Visalaw Fashion, Sports, & Entertainment

- Fresno Hockey Players Face Uncertain Immigration Future
- Music Critics at USCIS Nearly Wreck Star's US Recital
- Is India the Next Baseball Hotspot?
- Paving the Way for Latino NFL Officials
- Soprano Will Skip US Trip Due to Visa Headaches
- BALCA Denies Labor Certification Holding Singer Position not Full-Time
- Cuban Soccer Players Defect

Visalaw International Blog

- Canada: Sergio R. Karas Quoted in *The Lawyers Weekly*
- Canada: Sergio R. Karas Quoted in Today's *National Post* Story
- Canada: Immigration Priority List Announced
- Bombing Suspect Arrested in Canada
- Malaysia's "Most Wanted" Seeks to Stay in Canada

Visalaw Healthcare Immigration Blog

- Poll Shows Public Support for Extending S-CHIP to Legal Immigrant Kids
- Armed Forces to Recruit Foreign Doctors and Nurses
- The Immigrant Healthcare Dilemma
- DOS Issues Final Healthcare Worker Rule

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9. State Department Visa Bulletin for January 2009

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **January**. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by **January 8th** in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits.

Only applicants who have a priority date **earlier than** the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 201 of the Immigration and Nationality Act sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First : Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second : Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third : Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth : Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT-BASED PREFERENCES

First : Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second : Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third : Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

Fourth : Certain Special Immigrants: 7.1% of the worldwide level.

Fifth : Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of

consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (**NOTE:** Numbers are available only for applicants whose priority date is **earlier** than the cut-off date listed below.)

Family	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	15JUN02	15JUN02	15JUN02	01OCT92	15JUL93
2A	15MAY04	15MAY04	15MAY04	01AUG01	15MAY04
2B	22MAR00	22MAR00	22MAR00	01MAY92	01SEP97
3rd	01AUG00	01AUG00	01AUG00	01OCT92	22MAY91
4th	08FEB98	22AUG97	01NOV97	08MAR95	01MAY86

***NOTE:** For December, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 15AUG01. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 15AUG01 and earlier than 15MAY04. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
Employment-Based					
1st	C	C	C	C	C
2nd	C	08JUL04	01JUL03	C	C
3rd	01MAY05	01JUN02	15OCT01	15NOV02	01MAY05
Other Workers	15MAR03	15MAR03	15MAR03	15MAR03	15MAR03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C

5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105 - 139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States . The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2009 annual limit being reduced to 50,000**. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **January**, immigrant numbers in the DV category are available to qualified DV-2009 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off this is filler space right herenumber is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	18,300	Except: Egypt: 10,800 Ethiopia 10,000 Nigeria

		8,400
ASIA	8,300	
EUROPE	15,400	
NORTH AMERICA (BAHAMAS)	4	
OCEANIA	480	
SOUTH AMERICA, and the CARIBBEAN	790	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2009 program ends as of September 30, 2009. DV visas may not be issued to DV-2009 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2008 principals are only entitled to derivative DV status until September 30, 2009. DV visa availability through the very end of FY-2009 cannot be taken for granted. Numbers could be exhausted prior to September 30.

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN NOVEMBER

For **February,** immigrant numbers in the DV category are available to qualified DV-2008 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	23,300	Except: Egypt 13,300 Ethiopia 11,650 Nigeria 9,500
ASIA	11,000	Except: Bangladesh 9,550
EUROPE	15,400	
NORTH AMERICA (BAHAMAS)	5	
OCEANIA	575	
SOUTH AMERICA, and the	800	

CARIBBEAN		

D. IRAQI and AFGHAN TRANSLATOR VISA CATEGORY

The FY-2009 annual numerical limit for the Iraqi and Afghan Translator Visa (SI) program is 50, and demand for such visas currently exceeds that limit. Therefore, it may not be possible to process all the cases filed on or after October 1, 2008 during the course of FY-2009. Iraqi nationals may also apply for Special Immigrant visas (SQ) under section 1244 of the Defense Authorization Act. More information on these two programs is available at:

SI Program - http://travel.state.gov/visa/immigrants/info/info_3738.html

SQ Program - http://travel.state.gov/visa/immigrants/info/info_4172.html.

E. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:
http://travel.state.gov

From the home page, select the VISA section which contains the Visa Bulletin.

To be placed on the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

listserv@calist.state.gov

and in the message body type:
Subscribe Visa-Bulletin *First name/Last name*
(example: Subscribe Visa-Bulletin Sally Doe)

To be removed from the Department of State's E-mail subscription list for the "Visa Bulletin", send an e-mail message to the following E-mail address :

listserv@calist.state.gov

and in the message body type: **Signoff Visa-Bulletin**

The Department of State also has available a recorded message with visa cut-off dates which can be heard at: (area code 202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV

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10. Immigration as Stimulus – 10 Ideas for Using Migration Policy to Jumpstart the Economy and Create Jobs

By Greg Siskind

[Here's an update of an article I wrote a few weeks ago. I've added a few things and incorporated various reader suggestions. Many of you had great ideas on immigration policy generally, but the common denominator must be that the measures directly bring investment in the US economy or directly result in job creation. – Greg]

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Anti-immigrants love recessions because they can whip up fears of foreigners coming to the US and stealing American jobs. But pro-immigration advocates can just as easily make the case that immigrants are job generators for Americans. And immigration can do even more to help the economy than is the case under the current system. Here are ideas for changing immigration law to attract needed capital into American businesses and enable employers to hire more American workers. Some of these are changes that can be made by a government agency while others would require legislative changes.

1. Create a retiree visa

What if we could find people to immigrate to the US who are well off financially who want to spend money in the US and who have no desire now (or likely in the future) to try and find employment in the US? We can. They're retirees and they've been coming to the US for years. But many are reluctant to buy vacation or retirement properties because they only get 90 or 180 day stays when they come over and have to deal with convincing a CBP officer that they have strong ties abroad and are going home after each trip.

Why not create a retiree visa that would be limited to people who can show a steady source of non-work income, they have their own health insurance and they own a residence in the US without a mortgage?

2. Create a new medical visitor visa

You may not have heard of medical tourism, but it is a very important new trend in global health care. People are more and more frequently traveling outside their own countries for health care. A lot of Americans are looking to go abroad for procedures, particularly the uninsured, because of big cost differences. And a lot of wealthy foreign nationals are coming to the US because we have cutting edge treatments with some of the best doctors in the world. Creating a separate tourist visa for people who have the financial means to pay for their US treatment will give a boost to American hospitals and having foreign nationals able to pay the full bill for their care helps to underwrite Americans who don't qualify for government funded care, but are not well off enough to pay 100% of their medical bills.

3. Make F-1s dual intent and expand STEM occupations list

When a student applies for an F-1 visa, the student must demonstrate that he or she has no intention to immigrate. But it's pretty hard for someone to prove this when they're coming over for a program that lasts several years.

Making F-1 visas a dual intent category and not denying entry on the basis of a lack of ties to the home country will help in two very important ways. First, foreign students very often receive no financial aid and are, in effect, subsidizing American students unable to afford higher education without some outside help.

Second, a great number of American universities have been unable to find enough American students to fill slots in graduate programs, particularly in the STEM fields – science, technology, engineering and math. Those foreign students often make it possible for a university to keep a department going that otherwise might not survive and thrive without them here. And that means American graduate students have MORE opportunities. International students also help ensure that America's place as the premiere country for research is maintained.

F-1 students recently got good news when USCIS enacted a rule permitting practical training to be extended an additional 17 months when they have a degree in a STEM (science, technology, engineering or math) field. Unfortunately, USCIS took a very restrictive reading on which jobs are in STEM fields. The social, behavioral and economic sciences are left out despite the fact that the National Science Foundation includes these occupations in their STEM fields list. And how about including health science graduates? Even if the goal is promote industries other than direct health care, it's worth noting that many of these graduates work in biotechnology, pharmaceutical and medical device industries which are key export fields for the US.

4. Improve the EB-5 immigrant investor program

It's a real shame that only a few hundred of the ten thousand immigrant investors available each year end up getting used. Congress created this green card category in 1990 and the idea was to help American businesses attract foreign capital and also to create plenty of jobs for American workers. EB-5 immigrant investors who invest $1,000,000 and create ten jobs through their investment are supposed to get a green card in exchange for their helping the country.

Most countries in the developing world have an immigrant investor program, but the one in the US is, unfortunately, pretty unpopular. Why? A lot has to do with USCIS' well-documented hostility to the program over the years.

It's time for the our government to realize that this program is important to the country and making it difficult for immigrant investors to use the program costs Americans jobs and prevents American businesses from getting capital at a time when they could really use the help.

Here are some possible changes that would inject some life in to the EB-5 program:

a. Mandate premium processing – There is no reason why it should take USCIS seven months to process an I-526 application and then another four to six

months for the State Department to deal with the consular processing or two more years if the applicant chooses to adjust status (not kidding). If an applicant can afford the investment required for the EB-5, surely USCIS and DOS can come up with fee amounts that will enable the two agencies to be able to provide speedy, high quality service. In fact, the higher fees will enable USCIS to hire more people, thus making the EB-5 program a job creation visa in a new way.

b. Permit concurrent filing of I-526s and I-485s – The adjustment of status process in California is taking 27 months according to the latest California Service Center processing time report on top of the 7 months for the I-526. 27 months is a travesty, but at least allow concurrent filing as is the case with other employment-based green card categories.

c. Allow EB-5s for those providing loans to American companies and not just those taking equity investments – USCIS has been a real stickler over the years in terms of restricting the types of investments that work for the EB-5 program. Loans are barred under the EB-5 rules even if the loan results in tangible job creation. This seems pretty dumb when we're in the middle of one of the tightest credit markets in a century and businesses are failing every day because they can't get loans. The federal government is LOANING money to businesses to help save jobs. Yet USCIS acts like an investor is somehow being sneaky when an investment is structured as debt rather than equity. A loan can save a distressed business and result in job creation just like an equity investment.

d. Allow constructions jobs to count – USCIS will not count full time directly created jobs in construction in determining if ten full time jobs have resulted from the investment. Do construction workers somehow not count as real workers? Count 'em.

5. Bonus H-1Bs for employers that have expanded their US work force

Sure, we can get in to another argument over H-1Bs and get in to the age old arguments over how protectionist we should be when it comes to insulating the American labor market. But let's put that aside for the moment and think about places where there might be some room for agreement.

Today I read about one of the country's biggest banks laying off 35,000 workers. How about rewarding companies that expand the number of American workers on their payroll with bonus H-1Bs? Maybe something along the lines of a formula where for every four or five workers a company's work force grows, they get a cap exempt H-1B slot? Maybe more slots for companies that expand in higher than average unemployment areas or in indigent communities.

6. Eliminate the H-1B cap for occupations with less than 4% unemployment

Why 4%? That's a figure economists often consider to be "full" employment where workers have a relatively easy time finding employment and rates below this figure have an inflationary effect. If an employer can demonstrate it is filling jobs with H-1B workers in an occupation with full employment, then there should be little concern about displacing American workers. And jobs for Americans in the industry are saved because employer unable to find needed workers frequently shut down their US operations and move abroad, causing American and non-immigrant workers alike to lose their jobs.

7. E-2s – scrap the requirement that investing happen prior to the issuance of the E-2 visa and replace it with a probationary E-2 for a year that can be extended if the investor has begun investing funds.

The E-2 visa is available to investors investing "substantial" funds in a commercial enterprise in the US. When I explain to someone thinking about setting up a business in the US and getting an E-2 visa, they are often perplexed when I explain that they have to be actively in the process of investing a substantial amount of money and only after their money is sunk in the business will a consular officer approve the visa. Huh? You sink a fortune in to a business and then the consulate turns you down for the visa. Now that's attractive. Not!

While there is a legitimate concern with people being granted an E-2 visa and then not really going through with the investment, there is an alternative approach that could be tried. How about only approving the initial E-2 visa for a new investment for a year if the investor has not already invested substantially in the US business? We already do something similar with L-1 visas where USCIS will typically grant a one year approval for a new office in the US.

8. Create a green card category for E-2 investors if they have maintained the investment for five years and have created jobs for 10 workers

One of the gaps in our immigration system is that people can get an E-2 visa, create lots of jobs and invest lots of money, but they may never be able to get permanent residency. How about rewarding people who have invested for many years and created many jobs with permanent residency? Perhaps allow conversion after a person has invested for ten years and created ten jobs. Make the time shorter if the jobs are created in an inner city or rural low income area or higher than average unemployment area.

9. Create a new non-immigrant category for investors

Somewhat related to the above idea is the possibility of creating another investor immigration program. This one would have the following elements:

a. Unlike the E visa categories, this one would not be based on being a national of a qualifying treaty country.

b. Applicants would need to make a $250,000 initial investment ($200,000 if the investment is in an inner city or rural low income area or higher than average unemployment area)

c. Four jobs created must be created as a result of the investment (which must be shown before the visa is extended)

d. The visa would be approved for a period of three years

e. Holders of the visa can get extensions, but only with an additional $250,000 each time the extension is requested and only with a demonstration before each extension that the prior investment resulted in the required job creation).

f. The investor can apply for a green card any time after the investor can document that 12 jobs have been created as a result of the investment (perhaps a lower threshold like 10 jobs if the jobs are created in an inner city or rural low income area or higher than average unemployment area).

10. End green card caps for nurses and doctors

Sure the shortage of nurses and doctors is well-documented. But how is this one a stimulus or a job creation measure? Hospitals cannot expand without an adequate number of nurses and doctors. That's infrastructure money that isn't being invested when it could be. And studies show that for every new hospital bed that comes online, jobs are created – as many as three per new bed. There's also plenty of evidence that a lack of access to health care in poor and rural communities inhibits economic development in those communities. Perhaps add expedited green card processing for nurses and doctors working in medically underserved communities as well as an inner city or rural low income area or higher than average unemployment areas.